

# **THE SILVERSTEIN LAW FIRM**

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September 20, 2023

## **Via Email & Personal Delivery**

Barry Milofsky, President  
Members of the Cultural Heritage Comm'n  
Los Angeles City Hall  
200 N. Spring St., Room 1010  
Los Angeles, CA 90012

**Re: Item Number 4: Jardinette Apartments, HCM #390**

Dear President Milofsky and Members of the Cultural Heritage Commission:

This firm represents 737-747 N Western Owner LLC, which owns commercial property next door to the Jardinette Apartments. Our client has made significant private investment in this neighborhood, which efforts it hopes will result in new businesses and jobs for the area. However, deplorable conditions at the Jardinette Apartments and the City's refusal to address those conditions are a detriment to the surrounding community and unfairly burden those who live, work and desire to invest in improving the area.

For many years due to owner neglect and City inaction, the condition of the Jardinette Apartments has been allowed to deteriorate. After numerous complaints by the community, City inspectors visited the building. What the inspectors found and documented confirmed a building in disgraceful condition. Attached to this letter as **Exhibit A** are photographs of the building interior and exterior the City inspectors took in July, 2022. As depicted in the photographs, the interior is a shambles and the exterior of the building is an eyesore.

This matter is before the Commission because, in 1988, the City designated the Jardinette Apartments as Historic-Cultural Monument No. 390. Then, in 2017, at the recommendation of this body, the City Council approved a request from the owner of the Jardinette Apartments to enter into a historical property contract under California's Mills Act. Under the Mills Act contract, the property owner committed to rehabilitate, restore and maintain the Jardinette Apartments as specified in the contract. Pursuant to the contract, the property was to be maintained in "superior condition." Rehabilitation and

restoration work was to be done in 2018. In exchange for the owner's commitments, the City agreed to a special and dramatic reduction in property taxes.

Since 2017, the property owner has received six years of special reduced taxes. In exchange, the public has received nothing. The property remains an eyesore. The agreed-upon restoration and rehabilitation was not done by 2018. It still has not been done. Likewise, as shown by the attached photographs, the property owner's commitment to maintain the property in superior condition was never done. Judging from lack of activity at the site, the property's deplorable condition has not materially improved. Certainly there is no external evidence of improvement let alone "superior condition." Attached as **Exhibit B** is a photograph taken this month showing a ramshackle trash chute – apparently exposing pedestrians to danger – against a blighted building exterior with dumpsters in the street below. This building continues to be an eyesore, and has become a public nuisance. The community deserves better.

The Mills Act requires the City take certain action to ensure that owners of properties receiving favored tax treatment comply with their commitments. For instance, inspections are mandatory provisions of the Mills Act contract. Every five years, the City is required to inspect the interior and exterior of the premises to determine the owner's compliance with the contract. Then, if the City Council determines that any condition of the contract has been breached, the City is required to either proceed to cancel the contract or bring an action in court to enforce the contract.

In October, 2022, the City Council passed final action directing City staff to inspect the Jardinette Apartments to determine compliance with requirements of the Mills Act Contract. Motion was made to the Council reporting that the Jardinette Apartments "is a vacant 4-story apartment building.... It has significantly deteriorated and has active code enforcement for unpermitted construction work which is seemingly in violation of their Mills Act contract." In response, on October 11, 2022, the City Council ordered the following:

the Planning Department and the Department of Building and Safety, with the assistance of the City Attorney, and Police Department, to prepare a report with recommendations in 30 days on the existing condition of the following two *Mills Act* historical contract properties that appear to be in violation of the terms of their contracts: (1) the *Little Country Church of Hollywood* (HCM #567), located at 1750 N. Argyle Avenue, and (2) the *Jardinette*

*Apartments* (HCM #390), located at 5128 Marathon Street, and whether or not the Mills Act contract obligations for these two properties are being met; and if not, the enforcement or termination actions the City can take to ensure that the properties are being preserved and maintained in accordance with the terms of the Mills Act Historical Property Contract Program. (See **Exhibit C** hereto.)

The foregoing City Council action was taken in Council File no. 22-0984. The action directed the designated departments to conduct the described inspection of the Jardinette Apartments building and to prepare a report with recommendations within 30 days. The 30-day period ended November 10, 2022.

The City Council action was disregarded by the designated City departments and staff. We are not aware of any action taken by any of LADBS, City Planning, City Attorney or LAPD to comply with the Council order, much less by the required deadline of November 10, 2022.

Earlier this year, pursuant to the California Public Records Act, we served records requests upon each of LADBS, the City Planning Department, City Attorney and LAPD seeking any and all records relating to the October 11, 2022 order by City Council. Despite the clear Council direction, *none of the agencies provided any records demonstrating that any action whatsoever was taken in compliance with the October 11, 2022 City Council order* – no inspection, no report, no recommendations, no communication at all. The City Council action and its very specific directive, including the City Council's ordered November 10, 2022 return with action, were completely ignored by your City departments and staff.

Despite demand and despite direction from the City Council, the City has failed and refused to enforce the Historical Property Contract for the Jardinette Apartments, including failing to perform the required inspection, make the required written determinations of the owner's compliance, and compel the owner to perform the required restoration, rehabilitation and maintenance of the property as specified in the Contract.

In the face of the City's failure to comply with mandatory provisions of the Mills Act, the utter disregard of its own City Council's order, the unrelenting deplorable condition of the Jardinette Apartments, and the very plain violations of the Mills Act contract, our client was finally moved to file its lawsuit against the City seeking court order requiring the City to comply with its mandatory duties under the Mills Act.

Pending the City's full compliance with the Mills Act, including but not limited to inspection mandates and compliance with the City Council's order and full enforcement of the Mills Act Contract for the Jardinette Apartments, we object to the issuance of any permit for the Jardinette Apartments. Since the Los Angeles Administrative Code incorporates the Mills Act, all requirements set forth in the Mills Act are incorporated within the City ordinance. The City, therefore, is in violation of the Mills Act and City ordinance. Under Los Angeles Municipal Code § 11.02, any permit issued in violation of City ordinance is void.

In addition, the City is in violation of the California Constitution. Article 13, § 1 sets forth the fundamental principles by which state and local governments may constitutionally exercise authority to assess and tax property. With few exceptions, the California Constitution mandates that all property be taxed at the same proportion to its "full value." Full value property taxation is the general constitutional mandate for all property.

In 1976, through passage of Proposition 7, California voters approved a narrow exception to the Constitutional mandate in Art. 13, § 1 of full value property taxation. The exception is stated at Art. 13, § 8, which provides:

To promote the preservation of property of historical significance, the Legislature may define such property and shall provide that when it is enforceably restricted, in a manner specified by the Legislature, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

By its terms, Proposition 7 imposed an express condition precedent to any governmental action that reduces property value for tax purposes. Only where property is enforceably restricted as specified in the Mills Act does the City of Los Angeles have Constitutional authority to cause property to be valued for tax purposes at anything less than "full value." Since the City is in violation of the Mills Act, there is no Constitutional authority to assess any historical property at anything other than full value as required by Article 13, § 1.

Finally, we refer the Commission to the results of the Mills Act Program Assessment and Equity Analysis performed by Chattel, Inc. The Assessment, which was released in June, 2022, reported that the City routinely fails to meet Mills Act inspection requirements. The Assessment stated, "State law requires that compliance inspections be

Barry Milofsky, President  
Members of the Cultural Heritage Commission  
September 20, 2023  
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conducted for each contract every five years; to date, the City has completed approximately 25 percent of inspections required annually.” Of course, the Jardinette Apartments is among those properties not timely inspected.

So, despite the attached damning photographs, the Mills Act mandates, the express City Council order and an expert’s review, the City persists in failing and refusing to inspect the Jardinette Apartments for contract compliance and to report to the City Council the enforcement or termination actions the City can take to ensure that the Jardinette Apartments property is being preserved and maintained in accordance with the terms of its Mills Act Contract.

Based upon the foregoing facts and based upon the state Constitution, Mills Act, City ordinances and City Council official action all discussed above, we urge the Commission to take action, or **to agendize consideration of the following actions for the next Commission meeting**, to direct: (1) immediate inspection of the Jardinette Apartments, which inspection must determine compliance with all aspects of the Historical Property Contract for that property including all specified rehabilitation, restoration, and maintenance specified in the Contract, (2) preparation of a written report stating the inspector’s determination of compliance or non-compliance with the requirements of the Historical Property Contract, including all specified rehabilitation, restoration and maintenance, and (3) immediate action by the City to either cancel or specifically enforce the requirements of the Historical Property Contract.

Thank you for your prompt attention to these matters.

Very truly yours,

*/s/ Robert P. Silverstein*

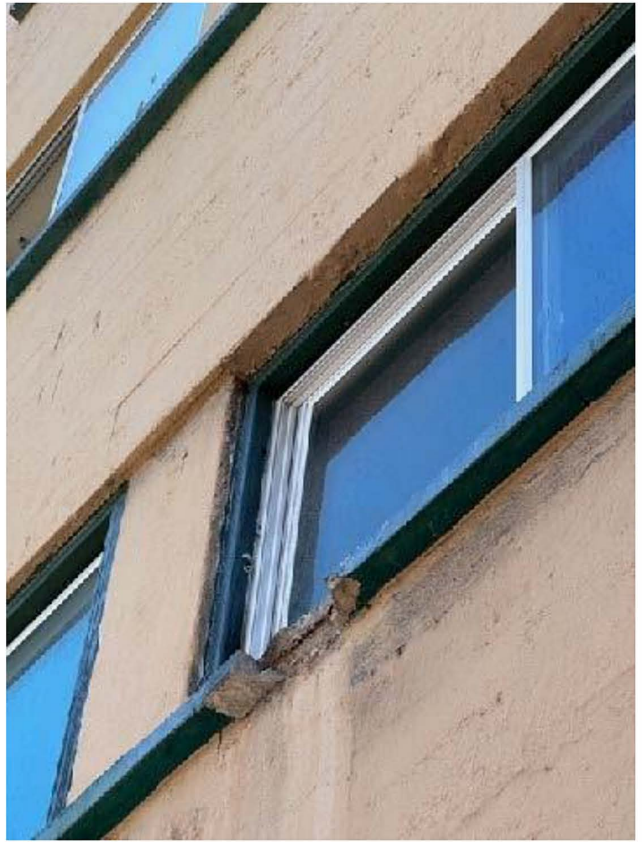
ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM, APC

cc Kaiulani Lie, Deputy City Attorney (via email)

# **EXHIBIT A**











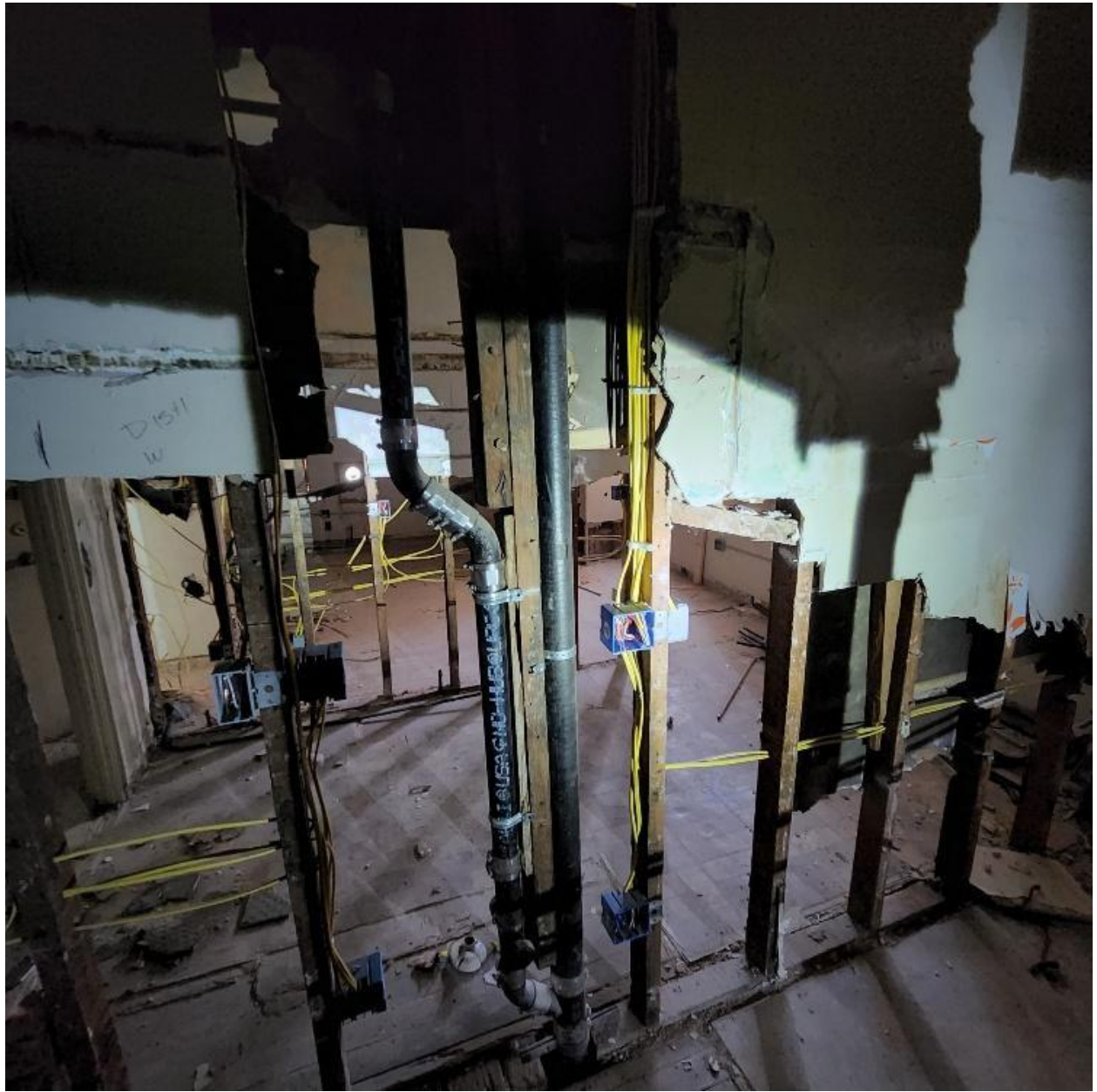




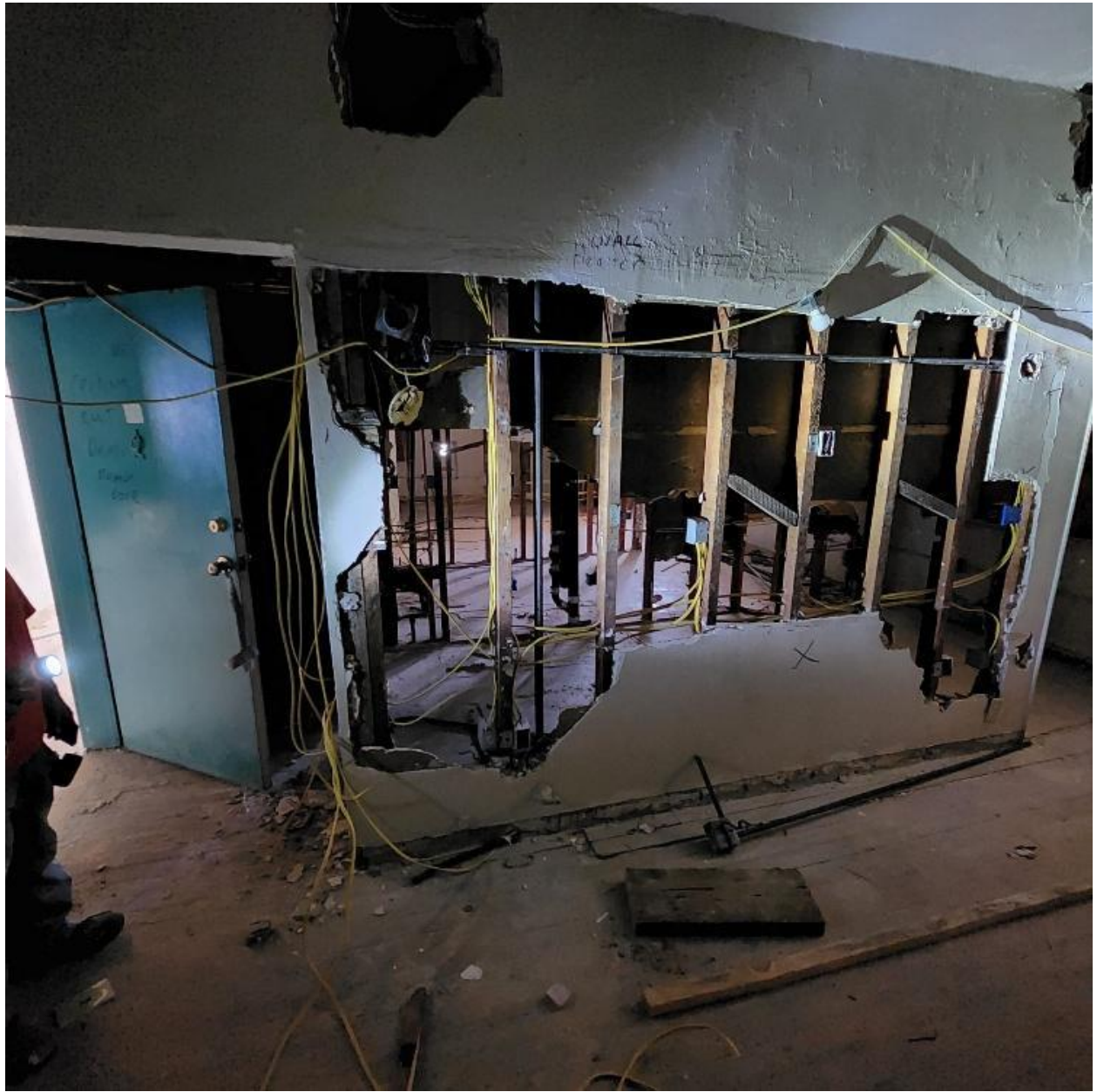














# **EXHIBIT B**



# **EXHIBIT C**



# MOTION

## PLANNING & LAND USE MANAGEMENT

The City adopted the *Mills Act Historical Property Contract Program* in 1996 (Ordinance No. 171413), Council File No. 94-0644. The program is administered by the Planning Department, and provides financial incentives to further the City's historic preservation goals and objectives. Property tax savings are directed to the preservation, rehabilitation and maintenance of historic properties.

The *Mills Act* is available to property owners of designated as Historic-Cultural Monuments (HCMs) and/or are Contributors to a Historic Preservation Overlay Zone. **The *Mills Act* is a contract between the City and a property owner that allows for a potential reduction in property taxes with the obligation that the property owner will invest funds for restoration, rehabilitation, and maintenance of the property.** The Cultural Heritage Commission reviews and approves applications for properties valued above the program limits and *Mills Act* contracts are approved by the Council. The contract obligates an owner to complete necessary work and comply with property maintenance requirements.

There are currently 951 *Mills Act* contracts with property owners Citywide, and a limited number of staff that are able to ensure that individual properties are in compliance with their contracts. The Planning Department is currently exploring ways in which to enhance contract compliance while also ensuring the financial viability and equitable distribution of the *Mills Act* benefits into the future.

**Failure of a *Mills Act* property owner to preserve, rehabilitate and maintain their historic property is not only a violation of the contract but a misappropriation of property tax dollars that could be allocated to greater community purposes.** The misuse of the *Mills Act* is even more egregious when activity at the property is counter to the purpose of the program to demonstrate the best practices in historic preservation and property maintenance.

While the Planning Department works on updating the *Mills Act* program, there are two *Mills Act* properties in Council District No. 13 that appear to be in violation of the terms of their contracts that need to be investigated. The properties are: (1) the *Little Country Church of Hollywood* (HCM #567), located at 1750 N. Argyle Avenue and; (2) the *Jardinette Apartments* (HCM #390), located at 5128 Marathon Street, both located in Hollywood.

The primary church building on the *Little Country Church of Hollywood* property was destroyed by fire in 2007. However, the historic gardens remain and are in a deteriorated state. The Department of Building and Safety has investigated the site over the years for conditions that seemingly are in violation of their *Mills Act* contract. In addition, **the Police Department has reported that the site is routinely broken into and have responded to multiple calls for service.** The *Jardinette Apartments*, designed by master architect Richard Neutra, is a vacant 4-story apartment building, subject to the Rent Stabilization Ordinance. It has significantly deteriorated and has active code enforcement for unpermitted construction work which is seemingly in violation of their *Mills Act* contract.

**I THEREFORE MOVE** that the Council instruct the Planning Department and the Department of Building and Safety, with the assistance of the City Attorney, and Police Department, to **prepare a report with recommendations in 30 days on the existing condition of the following two *Mills Act* historical contract properties that appear to be in violation of the terms of their contracts:** (1) the *Little Country Church of Hollywood* (HCM #567), located at 1750 N. Argyle Avenue, and (2) the *Jardinette Apartments* (HCM #390), located at 5128 Marathon Street, **and whether or not the *Mills Act* contract obligations for these two properties are being met; and if not, the enforcement or termination actions the City can take to ensure that the properties are being preserved and maintained in accordance with the terms of the *Mills Act Historical Property Contract Program* (Ordinance No. 171413).**

PRESENTED BY:

MITCH O'FARRELL

Councilmember, 13<sup>th</sup> District

SECONDED BY:

Paul R. [Signature]

AUG 26 2022

Mr. [Signature]

ORIGINAL

HOLLY L. WOLCOTT  
CITY CLERK

PETTY F. SANTOS  
EXECUTIVE OFFICER

City of Los Angeles  
CALIFORNIA



ERIC GARCETTI  
MAYOR

OFFICE OF THE  
CITY CLERK

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PATRICE Y. LATTIMORE  
DIVISION MANAGER

[CLERK.LACITY.ORG](http://CLERK.LACITY.ORG)

**OFFICIAL ACTION OF THE LOS ANGELES CITY COUNCIL**

<b>Council File No.:</b>	22-0984				
<b>Council Meeting Date:</b>	October 11, 2022				
<b>Agenda Item No.:</b>	17				
<b>Agenda Description:</b>	PLANNING AND LAND USE MANAGEMENT COMMITTEE REPORT relative to the existing conditions of two Mills Act historical contract properties that appear to be in violation of the terms of their contracts: (1) the Little Country Church of Hollywood [Historic-Cultural Monument (HCM) No. 567] located at 1750 North Argyle Avenue, and (2) the Jardinette Apartments (HCM No. 390) located at 5128 Marathon Street.				
<b>Council Action:</b>	PLANNING AND LAND USE MANAGEMENT COMMITTEE REPORT - ADOPTED				
<b>Council Vote:</b>					
YES	Blumenfield	YES	Bonin	ABSENT	Buscaino
ABSENT	Cedillo	ABSENT	de León	YES	Harris-Dawson
YES	Hutt	YES	Koretz	YES	Krekorian
ABSENT	Lee	ABSENT	Martinez	YES	O'Farrell
YES	Price Jr.	YES	Raman	YES	Rodriguez

HOLLY L. WOLCOTT  
CITY CLERK

Adopted Report(s)Title  
Report from Planning and Land Use Management Committee\_10-04-22

PLANNING AND LAND USE MANAGEMENT (PLUM) COMMITTEE REPORT relative to the existing conditions of two Mills Act historical contract properties that appear to be in violation of their contracts: (1) the Little Country Church of Hollywood [Historic-Cultural Monument (HCM) No. 567] located at 1750 North Argyle Avenue, and (2) the Jardinette Apartments (HCM No. 390) located at 5128 Marathon Street.

Recommendation for Council action, pursuant to Motion (O'Farrell - Koretz):

INSTRUCT the Department of City Planning (DCP) and the Department of Building and Safety (LADBS), with the assistance of the City Attorney, and Los Angeles Police Department (LAPD), to prepare a report with recommendations in 30 days on the existing condition of the following two Mills Act historical contract properties that appear to be in violation of the terms of their contracts: (1) the Little Country Church of Hollywood (HCM No. 567) located at 1750 North Argyle Avenue, and (2) the Jardinette Apartments (HCM No. 390) located at 5128 Marathon Street, and whether or not the Mills Act contract obligations for these two properties are being met; and if not, the enforcement or termination actions the City can take to ensure that the properties are being preserved and maintained in accordance with the terms of the Mills Act Historical Property Contract Program (Ordinance No. 171413).

Fiscal Impact Statement: Neither the City Administrative Officer nor the Chief Legislative Analyst has completed a financial analysis of this report.

Community Impact Statement: None submitted

Summary:

At a Regular Meeting held on October 4, 2021, the PLUM Committee considered Motion (O'Farrell - Koretz) relative to instructing the DCP and LADBS, with the assistance of the City Attorney, and LAPD, to prepare a report on the existing conditions of two Mills Act historical contract properties that appear to be in violation of the terms of their contracts, situated in Council District 13. After providing an opportunity for public comment, the Committee recommended to approve the recommendation contained in the Motion, as detailed above. This matter is now submitted to the Council for consideration.

Respectfully Submitted,

PLANNING AND LAND USE MANAGEMENT COMMITTEE

<u>MEMBER</u>	<u>VOTE</u>
HARRIS-DAWSON	YES
CEDILLO	YES
BLUMENFIELD	YES
LEE	YES
RODRIGUEZ	YES

CR/dl  
22-0984\_rpt\_PLUM\_10-04-22

**-NOT OFFICIAL UNTIL COUNCIL ACTS-**